We allowed the appeal against sentence by the second appellant and set aside the sentence imposed. In the circumstances of this case, we considered that a term of imprisonment of 24 years from the date of his arrest would be the appropriate sentence to impose on the second appellant and we so ordered.

Order accordingly.

Reported by *Zarinah Marican*

Chong Joon Wah v Tan Lye Thiang

COURT OF APPEAL (SINGAPORE) — CIVIL APPEAL NO 16 OF 1988
YONG PUNG HOW CJ, LAI KEW CHAI AND RAJENDRAN JJ
30 JULY 1991

Civil Procedure — Appeal — Appellate court ordering a new trial — Fresh evidence — Principle on which received

The appellant and respondent were involved in a traffic accident which also involved six other vehicles. The appellant issued a writ against the respondent in a district court summons and at the conclusion of the trial, judgment was given for the appellant for $3,629 and costs. The driver of the sixth car, one Ng Yong Teck ('Ng'), could not be traced and was not called as a witness, but by agreement his police report was tendered in evidence and was considered by the district judge in his grounds of decision. The respondent filed an appeal to the High Court and before the appeal was heard, he managed to trace Ng. He then obtained an order from the High Court for leave to adduce further evidence by Ng at the hearing of the appeal.

Ng gave evidence at the appeal. The learned judge concluded that his evidence was consistent with his police report and that, if he was to be believed, his evidence showed that the appellant's claim must fail. He ordered a re-trial by another district judge who would then be in the position to assess the credibility of Ng and the other witnesses. The appellant appealed to the Court of Appeal against this decision.

Held, allowing the appeal and affirming the district court's order:

(1) The learned High Court judge was only able to hear one witness, Ng, while the district judge heard many witnesses of fact, both as to liability and quantum and, in doing so, also considered Ng's police report. He had given full consideration to the conflicting allegations and assessed all the evidence, and made clear findings. Ng's evidence at a new trial, if it was merely consistent with his evidence in his earlier police report, which had already been considered by the district judge, could not by itself have any important influence on the result of a fresh hearing before another district judge.

(2) There was no explanation by the respondent as to why Ng's evidence could not have been obtained with reasonable diligence for use at the trial.

(3) There must be finality in litigation. The costs of litigation require that some semblance of proportion must be maintained and the Court of Appeal would be reluctant to order a new trial when the amount at stake is so small and the proceedings in court have already taken so long.

Case referred to
1 *Ladd* v *Marshall* [1954] 3 All ER 745 (folld)

Appeal from: District Court Appeal No 52 of 1985 (High Court, Singapore), DC Summons No 6530 of 1983 (District Court, Singapore)

Wong Juan Swee for the appellant.
Ng Kian Fong for the respondent.

Cur Adv Vult

Yong Pung How CJ (delivering the judgment of the court): On 28 February 1983, an accident took place at about 7.30am along Jalan Toa Payoh in the direction of Stevens Road. This accident involved eight motor vehicles. The line-up of the motor vehicles from the front to the back was as follows:

First — QEL 6948D;
Second — EM 3613J;
Third — EG 9253G;
Fourth — EP488H, a 1300-cc Subaru, driven by the appellant;
Fifth — SZ 3779E, a 1200-cc Datsun 120Y;
Sixth — QES 5837K, an 800-cc Suzuki, driven by Ng Yong Teck;
Seventh — SZ 5721H, a Datsun Bluebird;
Eighth — EC 2791L, an 1800-cc Fiat, driven by the respondent.

The appellant was driving the fourth car and the respondent the eighth car. On 12 September 1983, a writ was issued by the appellant against the respondent in a district court summons. At the conclusion of the trial in district court on 7 October 1985, judgment was given in favour of the appellant for $3,629 and costs. Ng Yong Teck, the driver of the sixth car, could not be traced and was not called as a witness, but by agreement his police report was tendered in evidence and was considered by the district judge in his grounds of decision.

On 19 October 1985, the respondent filed an appeal to the High Court against this judgment. Before the appeal was heard, he managed to trace Ng, following which he obtained an order from the High Court giving him leave to adduce further evidence by Ng at the hearing of the appeal.

The appeal was heard in the High Court by Coomaraswamy J on 15 February 1988, in the course of which Ng gave evidence. After hearing Ng's evidence, the learned judge was of the view that this evidence was consistent with his police report and that, if he was to be believed, his evidence showed that the appellant's claim against the respondent must fail. As the decision of the district judge had been based substantially on the evaluation of the credibility of the witnesses, Coomaraswamy J was of the view that it would be fairer to the parties if the whole case should be re-tried by another district

judge who would then be in a position to assess the credibility of Ng and the other witnesses named in the trial. He therefore allowed the appeal, set aside the order of the district judge, and ordered a re-trial.

On 26 February 1988, the appellant filed a notice of appeal to the Court of Appeal against the decision of Coomaraswamy J. In the petition of appeal, the main grounds were that Ng's evidence was not fresh evidence, and that a re-trial was not appropriate, having regard to the small amount of the claim and the time which had lapsed since proceedings started.

The principles which should be followed by an appellate court in ordering a new trial are those which were set out in the often quoted passage of Denning LJ in *Ladd* v *Marshall*[1] at p 748:

> It is very rare that application is made to this court for a new trial on the ground that a witness has told a lie. The principles to be applied are the same as those always applied when fresh evidence is sought to be introduced. In order to justify the reception of fresh evidence or a new trial, three conditions must be fulfilled: first, it must be shown that the evidence could not have been obtained with reasonable diligence for use at the trial; second, the evidence must be such that, if given, it would probably have an important influence on the result of the case, although it need not be decisive; third, the evidence must be such as is presumably to be believed, or in other words, it must be apparently credible, although it need not be incontrovertible.

In the present case, Coomaraswamy J was only able to hear one witness, Ng, before making his order. The district judge heard many witnesses of fact, both as to liability and quantum and, in doing so, also considered Ng's police report. Having assessed all the evidence and given full consideration to the conflicting allegations, he made clear findings and came to the conclusion that the accident was caused by the respondent. In his long and careful grounds of judgment, he gave detailed reasons for the findings and conclusions he had come to. With respect, we were unable to see how Ng's evidence at a new trial, if it was merely consistent with his evidence in his earlier police report, which had already been considered by the district judge, could by itself have any important influence on the result of a fresh hearing before another district judge.

There was no explanation by the respondent as to why Ng's evidence could not have been obtained with reasonable diligence for use at the trial. Indeed, it might also have been helpful to know why the respondent, or more probably his insurers, having already had sight of Ng's evidence from his earlier police report, should have employed greater diligence after the trial to trace him and to pursue the appeal when the amount awarded was only $3,629.

It need hardly be said that there must be finality in litigation. Even apart from the principles laid down in *Ladd* v *Marshall*,[1] the costs of litigation require that some semblance of proportion must be maintained, and the Court of Appeal would be reluctant to order a new trial when the amount at stake is so small and the proceedings in court have already taken so long.

We therefore set aside the learned High Court judge's decision, affirmed the learned district judge's decision and awarded costs here and below.

Appeal allowed.

Solicitors: *Wong Juan Swee; Ng Kian Fong & Co.*

Reported by *Zarinah Marican*

Mohamed Nazran v Al-Ekhwan Construction (Pte) Ltd

HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS NO 24 OF 1990
THEAN J
30 APRIL 1991

Contract — Termination — Agreement by defendants to restore plaintiff's premises — Construction of agreement — Whether defendants had obtained the requisite approvals and consents from the relevant authorities for the restoration of premises — Whether plaintiff entitled to terminate agreement

Equity — Equitable estoppel — Agreement by defendants to restore plaintiff's premises — Whether plaintiff estopped from terminating agreement by virtue of acts done after defendants' failure to obtain requisite approvals and consents

Land Law — Restoration of premises — Consents and approvals from the relevant authorities required under the agreement

The plaintiff was the owner of five premises ('the premises'). The defendants were building contractors, who had entered into an agreement ('the agreement') with the plaintiff to restore, at the defendants' own costs and expenses, the premises, and in return the plaintiff would transfer to the defendants three of the five premises after the restoration.

Clause 2.1 of the agreement provided that it was a condition precedent of the agreement that the defendants apply for and obtain all necessary consents from the relevant authorities for the restoration of the premises including (a) planning permission in respect of the restoration of the land; and (b) approvals from the appropriate authorities for the restoration and upgrading of the premises. Clause 2.3 of the agreement further provided that the plaintiff had an option to terminate the agreement if the defendants failed to obtain the said approvals within three months from the date of the agreement.

The defendants' architects made submissions to the Urban Redevelopment Authority ('URA') regarding the proposed restoration and URA wrote to the architects stating that they had no objections to the proposed restoration subject to compliance by the defendants with certain stated conditions.

On 8 December 1989, the plaintiff served a notice of termination of the agreement on the ground that the defendants